

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 09-02447 CW

ORVILLE MEAUX,

Plaintiff,

v.

NORTHWEST AIRLINES, INC., a Delaware Corporation; PROFESSIONAL FLIGHT ATTENDANTS ASSOCIATION, a labor organization; TRANSPORT WORKERS UNION, a labor organization; ASSOCIATION OF FLIGHT ATTENDANTS-COMMUNICATIONS WORKERS OF AMERICA, a labor organization; and DOES 1 to 20 inclusive,

Defendants.

ORDER GRANTING  
DEFENDANT  
NORTHWEST'S MOTION  
TO DISMISS  
(Docket No. 8)

Plaintiff Orville Meaux brings this lawsuit alleging a claim against Defendant Northwest Airlines, Inc. for wrongful discharge in breach of the collective bargaining agreement, and a claim for breach of the duty of fair representation against Defendants Professional Flight Attendants Association (PFAA), Transport Workers Union (TWU) and Association of Flight Attendants - Communications Workers of America (AFA-CWA) (collectively, the Union). Northwest moves to dismiss the claim against it pursuant to the bankruptcy discharge injunction it received in its Bankruptcy Case No. 05-17930 (S.D.N.Y. May 18, 2007). Plaintiff

1 opposes the motion. The matter was heard on September 24, 2009.  
2 Having considered all of the papers filed by the parties and oral  
3 argument on the motion, the Court grants Northwest's motion.

4 BACKGROUND

5 The following facts are taken from Plaintiff's complaint and  
6 the documents of which the Court takes judicial notice.<sup>1</sup> In June,  
7 2004, Plaintiff filed a complaint against Northwest in San  
8 Francisco Superior Court, alleging causes of action for breach of  
9 contract, discrimination, retaliation and harassment based on  
10 Northwest's termination of Plaintiff's employment as a senior  
11 flight attendant. Northwest removed Plaintiff's complaint to this  
12 Court, Meaux v. Northwest Airlines, et al., Case No. C 04-04444 CW.  
13 On or about August 26, 2005, Northwest filed a motion for summary  
14 judgment in Case No. C 04-04444 CW. Plaintiff did not file an  
15 opposition. On September 14, 2005, Northwest filed for bankruptcy  
16 protection under Chapter 11 of the Bankruptcy Code, and  
17 accordingly, this Court stayed Case No. C 04-04444 CW. In  
18 Northwest's bankruptcy case, the court issued a discharge  
19 injunction with an effective date of May 31, 2007. The discharge  
20 injunction barred all claims arising before May 31, 2007. On May  
21 18, 2009, the bankruptcy court modified Northwest's discharge  
22 injunction for the sole purpose of permitting Plaintiff to pursue  
23 Case No. C 04-04444 CW (May 18, 2009 Modification Order). However,  
24 Plaintiff has not taken any action in Case No. C 04-04444 CW.

25 Meanwhile, in June, 2008, Plaintiff's grievance arbitration  
26 for unjust discipline and termination took place in accordance with

---

27  
28 <sup>1</sup> The Court grants Plaintiff's and Northwest's requests for  
judicial notice (Docket Nos. 12 & 15).

1 the collective bargaining agreement. On or after December 4, 2008,  
2 the arbitrators denied Plaintiff's grievance. Plaintiff filed this  
3 suit on June 3, 2009. Northwest moves to dismiss the claim against  
4 it on the ground that it is in violation of the discharge  
5 injunction and the May 18, 2009 Modification Order.

6 DISCUSSION

7 I. Discharge Injunction

8 Northwest argues that Plaintiff's claim against it arose at  
9 the time of his termination of employment on January 26, 2004, and  
10 therefore, this lawsuit was filed in violation of the bankruptcy  
11 discharge injunction. Plaintiff contends that his claim did not  
12 accrue until December 4, 2008, the day the arbitration board issued  
13 its written decision and, therefore, it is a post-petition claim  
14 that is not subject to the discharge injunction.

15 Confirmation of a debtor's bankruptcy plan discharges debts  
16 arising prior to the date of confirmation. 11 U.S.C. § 1141(d).  
17 Accordingly, Plaintiff's claim would survive the discharge  
18 injunction only if it arose subsequent to the effective date of May  
19 31, 2007. The Ninth Circuit has explained that whether section  
20 1141(d) discharges a claim hinges upon when the alleged misconduct  
21 occurred. O'Loghlin v. County of Orange, 229 F.3d 871, 874-75 (9th  
22 Cir. 2000). Plaintiff's claim against Northwest arose on January  
23 26, 2004, the date of his termination, not, as he claims, on the  
24 date of the arbitration board's decision against him. Thus, the  
25 claim is barred by the discharge injunction.

26 Plaintiff suggests that, because he must prove a claim against  
27 the Union in order to sue Northwest, and he couldn't sue the Union  
28 until he had exhausted his collective bargaining agreement

1 remedies, he may now bring a new hybrid action against both, and  
2 this constitutes a new claim arising on December 4, 2008. A claim  
3 against an employer for breach of a collective bargaining agreement  
4 combined with a claim against a union for breaching the duty of  
5 fair representation is sometimes called a hybrid action. However,  
6 although the two claims in a hybrid action are "inextricably  
7 interdependent," such a suit comprises two causes of action.  
8 DelCostello v. Int'l Bhd. of Teamsters et al., 462 U.S. 151, 164  
9 (1983). An employee may bring suit against either the employer or  
10 the union singly, or against both, even though the case the  
11 employee must prove is the same whether he sues one, the other, or  
12 both. Id. at 165. Therefore, Plaintiff's suit against the Union  
13 does not rescue his claim against Northwest from the bar of the  
14 discharge injunction.

15 II. Section 1113(f)

16 Plaintiff argues that, even if his claim arose prior to  
17 Northwest's bankruptcy, it can still be adjudicated in this Court  
18 because section 1113(f) of the Bankruptcy Code excludes a dispute  
19 involving collective bargaining agreement rights from the automatic  
20 stay. Plaintiff misconstrues section 1113(f).

21 Section 1113(f) only applies to those instances where a debtor  
22 unilaterally terminates or alters a provision of a collective  
23 bargaining agreement. In re Ionosphere Clubs, Inc., 922 F.2d 984,  
24 992 (2d Cir. 1990). Here, Northwest complied with the collective  
25 bargaining agreement by arbitrating Plaintiff's dispute.  
26 Therefore, section 1113(f) does not apply.

27 CONCLUSION

28 For the foregoing reasons, the Court GRANTS Defendant

1 Northwest's motion to dismiss (Docket No. 8). The Court GRANTS the  
2 parties' requests for judicial notice (Docket Nos. 12 & 15). The  
3 claim against Northwest in this lawsuit is dismissed with prejudice  
4 because amendment would be futile. Although Plaintiff is barred  
5 from bringing a new claim against Northwest, he may pursue Case No.  
6 C 04-04444 CW against Northwest pursuant to the May 19, 2009  
7 Modification Order. Plaintiff may also pursue his claim against  
8 the Union in this case for its alleged breach of the duty of fair  
9 representation during the arbitration.

10 The Court consolidates this case with Case No. C 04-4444 CW,  
11 which was administratively re-opened on October 2, 2009. At the  
12 hearing, the Court gave Plaintiff 120 days to serve all other Union  
13 Defendants and Defendant TWU. TWU was represented by counsel at  
14 the hearing and, on the record, agreed to accept service by mail.  
15 Defendant TWU and the other Union Defendants may file an answer or  
16 motion to dismiss in this case by November 5, 2009. Defendant  
17 Northwest may file a new motion for summary judgment in Case No. C  
18 04-4444 CW by November 12, 2009. Plaintiff must file his  
19 oppositions to both motions by December 3, 2009. Defendants must  
20 file their replies in support of both motions by December 17, 2009.  
21 The Court will take the matters under submission on the pleadings  
22 or set a hearing if necessary. A case management conference is  
23 scheduled for April 20, 2010 at 2:00 p.m.

24 IT IS SO ORDERED.

25 Dated: 10/16/09



26 CLAUDIA WILKEN  
27 United States District Judge  
28